

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SEVEN Z ENTERPRISES, INC., et al.,)	Case No. 2:17-cv-00740-CCC
Plaintiffs,)	
)	
v.)	
)	
GIANT EAGLE, INC.,)	
Defendant/Counterclaim-Plaintiff,)	
)	
v.)	
)	
MON VALLEY FOODS, INC., et al.,)	
Counterclaim-Defendants.)	
)	
<hr style="width: 45%; margin-left: 0;"/>		
CELTIC EAGLE, INC.,)	
Plaintiff,)	
)	
v.)	
)	
GIANT EAGLE, INC.,)	
Defendant.)	

**MOTION TO EXCLUDE EXPERT TESTIMONY AND REPORTS OF PLAINTIFFS’
EXPERTS KINSHUK JERATH, LEE D. ARMBUSTER, AND JEFFERY A. BACCARE**

Defendant Giant Eagle, Inc. (“**Giant Eagle**”), by and through its attorneys, hereby moves to exclude from evidence the expert reports and testimony of three expert witnesses proffered by Plaintiffs. As set forth in Giant Eagle’s accompanying Consolidated Brief in Support of this Motion to Exclude (“**Brief**”), the proffered reports and testimony do not meet the standard for admissibility under Federal Rules of Evidence 702 and 703 and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 589 (1993).

In support of this Motion, Giant Eagle states as follows:

1. This Motion seeks the exclusion of three expert reports served by Plaintiffs on Giant Eagle on February 21, 2020:

- a. The Expert Report of Professor Kinshuk Jerath, an Associate Professor of Business in the Marketing Division at Columbia Business School at Columbia University who opines that the fuelperks! and fuelperks+ programs either were or are “unprofitable” to the Plaintiffs on average. A copy of Professor Jerath’s Report is attached as Exhibit 1 to the accompanying Brief (“**Jerath Rep.**”). Giant Eagle deposed Mr. Jerath on March 6, 2020. A copy of Professor Jerath’s deposition testimony is attached as Exhibit 3 to the accompanying Brief (“**Jerath Tr.**”).
- b. The Expert Report of Lee D. Armbuster, an individual who owns two independent grocery stores in Virginia, who offers multiple opinions regarding alleged wrongdoing by Giant Eagle. A copy of Mr. Armbuster’s Report is attached as Exhibit 6 to the accompanying Brief (“**Armbuster Rep.**”). Giant Eagle deposed Mr. Armbuster on March 13, 2020. A copy of Mr. Armbuster’s deposition testimony is attached as Exhibit 7 to the accompanying Brief (“**Armbuster Tr.**”).
- c. The Expert Report of Jeffrey A. Baccare, a certified public accountant, who opined about the impact of fuelperks! and fuelperks+ on Plaintiffs’ combined net cash flow and net income margins. A copy of Mr. Baccare’s Report is attached as Exhibit 13 to the accompanying Brief (“**Baccare Rep.**”). Giant Eagle deposed Mr. Baccare on March 10, 2020. A copy of Mr. Baccare’s deposition testimony is attached as Exhibit 14 to the accompanying Brief (“**Baccare Tr.**”).¹

2. For the reasons set forth in the accompanying Brief, the reports and testimony of Professor Jerath, Mr. Armbuster, and Mr. Baccare, should be excluded.

3. A proposed Order is attached hereto.

Dated: April 20, 2020

Respectfully submitted,

/s/ Daniel J. Stuart

Bernard D. Marcus (PA ID #01293)

marcus@marcus-shapira.com

Jonathan D. Marcus (PA ID #312829)

jmarcus@marcus-shapira.com

Daniel J. Stuart (PA ID #321011)

stuart@marcus-shapira.com

¹ Plaintiffs also served a fourth expert report from E. Allen Jacobs, a consultant at Berkeley Research Group LLC in Texas, purporting to calculate the economic damages to Plaintiffs under an assumption of liability. Due to the ongoing COVID-19 crisis, Giant Eagle has not had the opportunity to depose Mr. Jacobs. The parties are working to schedule Mr. Jacob’s deposition, after which time Giant Eagle will evaluate whether Mr. Jacobs’ report and testimony is admissible and, if appropriate, file a similar Motion to Exclude.

Scott D. Livingston (PA ID #60649)
livingston@marcus-shapira.com
Joshua A. Kobrin (PA ID #318200)
kobrin@marcus-shapira.com

MARCUS & SHAPIRA LLP
301 Grant Street
One Oxford Centre, 35th Floor
Pittsburgh, PA 15219
Telephone: (412) 471-3490
Facsimile: (412) 391-8758

Counsel for Giant Eagle, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via ECF this 20th day of April, 2020 upon the following:

Kathleen A. Gallagher, Esq.
Russell D. Giancola, Esq.
Thomas S. Jones, Esq.
Kevin C. Meacham, Esq.
Daniel P. Wolfe, Esq.
Devin A. Winklosky, Esq.
Matthew C. Gill, Esq.
David I. Kelch, Esq.
Porter Wright Morris & Arthur LLP
6 PPG Place, Third Floor
Pittsburgh, PA 15222
kgallagher@porterwright.com
rgiancola@porterwright.com
tjones@porterwright.com
kmeacham@porterwright.com
dwolfe@porterwright.com
dwinklosky@porterwright.com
mgill@porterwright.com
dkelch@porterwright.com

James D. Curphey, Esq.
Porter Wright Morris & Arthur LLP
41 South High Street, Suite 2900
Columbus, OH 43215
jcurphey@porterwright.com

James M. Sack, Esq.
The Sack Law Firm P.C.
8270 Greensboro Drive, Suite 810
McLean, VA 22102
jms@sacklaw.com

Thomas W. Corbett, Jr., Esq.
Julian E. Neiser, Esq.
Spilman Thomas & Battle, PLLC
One Oxford Centre, Suite 3440
301 Grant Street
Pittsburgh, PA 15219
tcorbett@spilmanlaw.com
jneiser@spilmanlaw.com

/s/ Daniel J. Stuart

Daniel J. Stuart